

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**In Re: Santa Fe Natural Tobacco Company
Marketing & Sales Practices Litigation**

Lead Case No. 1:16-md-02695-JB-LF

This Document Relates to All Actions

PLAINTIFFS' NOTICE OF FILING SUPPLEMENTAL AUTHORITY

PLEASE TAKE NOTICE that, pursuant to Local Rule 7.8(a) and 7.8(c), Plaintiffs respectfully submit supplemental authority, *Discount Tobacco City & Lottery, Inc. v. U.S.*, 674 F.3d 509 (6th Cir. 2012) (Exhibit A) in opposition to Defendants' motion to dismiss. This case rebuts Defendants' motion generally, and it rebuts Defendants' First Amendment protection, safe harbor, reasonable consumer, unjust enrichment, and injunctive relief arguments. *See* Def. Br. at Points II-IV, VI [DE 90].

In *Discount Tobacco*, several tobacco companies including R.J. Reynolds Tobacco Company, a defendant here, sued the government to challenge the Family Smoking Prevention and Tobacco Control Act (the TCA). The tobacco companies argued that restrictions on using the phrase "additive free" violated their right to free speech under the First Amendment. The U.S. Court of Appeals for the Sixth Circuit rejected that argument. The Court stated:

[Tobacco Companies'] have presented no evidence to suggest that "consumers who prefer organic products for environmental or other reasons ... [but do not] perceive [them] ... to convey a health benefit," ... actually exist. On the contrary, we may safely presume that naturalists and those who subscribe to organic products do not engage in unmotivated or arbitrary behavior—common sense dictates the conclusion that they prefer such products precisely because they believe that natural and organic products confer health advantages over conventional products. *Id.* at 536. (emphasis supplied).

Dated: May 8, 2017

Respectfully submitted,

s/Scott P. Schlesinger
Scott P. Schlesinger

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2017, the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

s/Jeffrey L. Haberman
Jeffrey L. Haberman